IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 770 OF 2006

Municipal Corporation for the city of Pune ...Appellant

V/s.

Shri Prabhakar Purushottam Joshi ...Respondent

Mr.R.G. Ketkar for the Appellant.
Mr.Sachin Dhakephalkar i/b. Mr.Kedar J. Patil for the Respondent.

CORAM : V.M. KANADE, J.

DATED : AUGUST 22, 2007

P.C. :-

. The appellant is a Municipal Corporation who is challenging the order passed by the Civil Judge, Junior Division, P.M.C. Court, Pune, whereby the suit filed by the plaintiff was decreed and demand notice and Japti Warrant dated 7th March, 1994 was declared null and void and the Corporation was restrained from enforcing the said warrant and recovering the tax alleged. The Corporation being aggrieved by the said order preferred an appeal before the District Judge, Pune. However, 7th Ad-hoc Additional District Judge, Pune, confirmed the order of the trial Court and dismissed the appeal. Being aggrieved by the aforesaid two orders, the appellant has preferred this second appeal.

2 The learned Counsel for the appellant submitted that the suit itself was not maintainable in view of the provisions of Section 406 of the BPMC Act. He invited my attention to the prayer clause in the plaint and submitted that the ratable value was not challenged by the plaintiff and that the ratable value being confirmed, it was not open for the plaintiff to challenge the demand notice and the Japti Warrant. It is further submitted that both the Courts below have erred in holding that the plaintiff is not liable to pay the amount in the demand notice particularly when specific averment was made by the plaintiff in his plaint stating therein that he was carrying on business in the said premises and that he was in occupation of three shops at Sr.Nos.24 to 26 which was his occupation. The learned Counsel submitted that therefore, both the Courts below had clearly overlooked this position and had erred in recording the finding that the plaintiff was neither the owner nor the tenant licensee or even in authorised occupation.

3. It is not possible to accept the submission made by the appellant. There is no statutory bar under the provisions of BPMC Act in filing the suit and as such, the jurisdiction of the civil court is neither expressly nor impliedly ousted. The Civil Court, therefore, had a jurisdiction to try and entertain the suit which was filed by the respondent-plaintiff. The plaintiff had come out with specific case that he is not liable to pay the said taxes since he was neither the owner nor the occupier of the said premises. The evidence has come on record to show that the landlord has filed the suit for eviction against the tenant and that he had succeeded in evicting the plaintiff. After taking into consideration the entire evidence on record and finding of fact has been recorded by the court, I do not see any reason to interfere with the said concurrent finding of fact.

4. Second Appeal, therefore is dismissed. Civil Application also does not survive.

5. The appellant has deposited the costs as directed in this Court. The same may be transferred to

Legal Aid Cell.

(V.M. KANADE, J.)